

June 28, 2021

**VIA EMAIL ONLY:** grahamfiller@house.mi.gov; mikemueller@house.mi.gov; and davidlagrand@house.mi.gov

The Honorable Representative Graham Filler, Committee Chair  
Michigan House of Representatives Judiciary Committee

The Honorable Representative Mike Mueller, Majority Vice Chair  
Michigan House of Representatives Judiciary Committee

The Honorable Representative David LaGrand, Minority Vice Chair  
Michigan House of Representatives Judiciary Committee

**Re: Support for HB 4159 and HB 4160, reforms to protect  
Vulnerable Adults against online predation**

Dear Representative Filler, Representative Mueller, and Representative LaGrand:

Please include this Letter of Support as part of your documentation to turn HB 4159 and HB 4160 into State of Michigan law. The undersigned have performed a detailed analysis of these bills and wholeheartedly approve of the proposed legislation.

**I. House Bills 4159 and 4160 will close a gap in Michigan law and must be enacted**

During hearings in June 2019 and March 2021, the Michigan House of Representatives Committee for Families, Seniors, and Children reviewed House Bills 4159 (formerly HB 4076 (2019)) and 4160. House Bills 4159 and 4160 are sponsored by Representative Padma Kuppa and Representative Julie Calley, respectively. Each bill will add a new section to the Michigan Penal Code to prohibit certain conduct concerning sexually explicit visual material of a Vulnerable Adult. Specifically, the bills would prohibit a person from “requesting, persuading, convincing, threatening, commanding, forcing, or coercing” a Vulnerable Adult into providing him or her, or any other person, with sexually explicit visual material of the Vulnerable Adult.

We have testified before this Committee twice to speak on the disability, consent, and criminal issues that underlie these bills. *See* Tables 1 and 2. There is an urgent need to modernize state laws to protect Vulnerable Adults with severe intellectual impairments against online predation. We have described how Vulnerable Adults include individuals with severe intellectual and/or developmental disabilities, as well as individuals that have a severe cognitive impairment. In addition, we have explained the need for state laws to include specific language

that protects Vulnerable Adults from online predators. The proposed legislation does not change the existing legal definition of a Vulnerable Adult, which has been a protected classification under Michigan law since 1994. *See* Michigan Compiled Laws (MCL) 750.145m (1994), Table 3, and the attached Slideshow Summary (bates labeled as “V. Adults 1 through 8”).

Once enacted into law, these bills will deter would-be predators and hold offenders criminally accountable when they seek sexually explicit visual materials from a Vulnerable Adult without the Vulnerable Adult’s consent. These bills create meaningful protections for Vulnerable Adults who are targeted for sexual exploitation over the Internet. Because this legislation is focused solely on communications that occur without mutual consent, these laws protect Vulnerable Adults without infringing on anyone’s Constitutional rights to freedom of speech and expression..

## **II. Vulnerable Adults need protections against online predation and abuse**

Federal law requires each state to have specific legal protections to guard those age 17 and younger against online abuse. *See* 15 USC §§ 6501–6505 (1998), 47 USC § 231 (1998), and 18 USC §§ 2251 et seq. (2008). Most of these legal protections do not apply once a person reaches legal adulthood at age 18, even in cases where an individual is a Vulnerable Adult. Throughout history, America’s Internet predation laws have largely focused on protecting minors and not adults. Under federal law, it is illegal for an adult to share sexually explicit visual materials over the Internet with someone age 17 or younger. If both parties are age 18 or older, however, this same online exchange may be legal and protected under Constitutional rights to freedom of speech/expression. The key difference between the two scenarios is not a person’s age in and of itself, but the ability to provide legally binding consent.

Vulnerable Adult policies encompass two groups of individuals: (1) people with severe intellectual and developmental disabilities that present early in life, and (2) people with severe cognitive impairments that present later in life. *See* MCL 750.145m (1994). Vulnerable Adults experience a number of challenges in their day-to-day functioning, including challenges that impact reasoning, problem solving, and ability to make judgments. The chronological age of a Vulnerable Adult—the number of years lived—does not typically coincide with their cognitive or mental age. As a population, Vulnerable Adults face the highest risk of being targeted or exploited in both online and in-person scenarios.

During our testimony before this Committee in June 2019 and March 2021, we illustrated three areas of overall functioning that pose challenges for Vulnerable Adults. These areas include conceptual, social, and practical functioning. Many Vulnerable Adults experience challenges with regard to their ability to interpret social situations, which can pose safety risks for Vulnerable Adults who lack the cognitive capacity to identify and recognize unsafe situations.

### III. House Bills 4159 and 4160 compliment Michigan’s existing laws

Michigan is one of the majority of states that have adopted a “Nonconsensual Pornography Statute.” It is a misdemeanor crime in Michigan for an adult to share sexually explicit photos of another person without their permission. *See* MCL 750.145(e) (2016). Specifically, it is illegal under Michigan law to “disseminate” any sexually explicit visual material of another adult with the intent to “threaten, coerce, or intimidate.” *See* Table 4. By comparison, House Bills 4159 and 4160 concern Vulnerable Adults and do not address on dissemination matters. The bills focus on an offender’s exploitative actions towards a Vulnerable Adult—requesting, persuading, convincing, threatening, commanding, forcing, or coercing a Vulnerable Adult into sharing sexually explicit visual material of himself or herself. Online exploitation of a Vulnerable Adult is not a matter of sexual self-expression between mutually consenting parties. Make no mistake, these bills address a form of violence over the Internet.

### IV. Reference Tables 1–4

**Table 1. Age and Consent Considerations in Michigan: Four Scenarios with Adults/Minors**

Example Number	Individuals	Example Details	Legal Concerns
Scenario 1	Adult (age 18 or older) and a minor (age 17 or younger)	An adult shares sexually explicit visual materials over the Internet with a minor. The minor communicates that he/she consents to this exchange. The adult communicates that he/she consents to this exchange.	The minor’s statement of consent is not legally valid. It is a criminal offense to send photos that are sexually explicit of people who are not yet 18 years old. The adult’s actions with the minor in Scenario 1 are <b>illegal</b> .
Scenario 2	Adult (age 18 or older) and another adult (age 18 or older)	Adult 1 obtains sexually explicit visual materials of Adult 2. Adult 1 knows (or reasonably should know) that the materials are private in nature. Adult 1 also knows (or reasonably should know) that Adult 2 <b>did not provide</b> consent to disseminate the materials. Despite this knowledge, Adult 1 shares the materials with others.	The adult’s actions with the other adult in Scenario 2 are likely <b>illegal</b> under civil and/or criminal law because of the lack of consent from Adult 2. <i>See e.g.</i> , MCL 750.145m(u) (1994).

Scenario 3	Adult (age 18 or older) and another adult (age 18 or older)	Adult 1 obtains sexually explicit visual materials of Adult 2. Adult 1 knows (or reasonably should know) that the materials are private in nature. Adult 2 <b>provides consent</b> to disseminate the materials and Adult 1 disseminates the materials online.	The adults' actions in Scenario 3 are <b>legal</b> . There is mutual consent between both adults.
Scenario 4	Adult (age 18 or older) and another adult (age 18 or older)	<p>Adult 2 is a "Vulnerable Adult." Adult 1 obtains sexually explicit visual materials of Adult 2 <b>without valid consent</b> from Adult 2. Adult 1 knows (or reasonably should know) that the other person <b>did not consent</b> to provide sexually explicit visual material. Adult 1 acts by requesting, persuading, convincing, threatening, commanding, forcing, and/or coercing Adult 2 to provide the materials <b>without mutual consent</b>.</p> <p>Unlike Scenarios 2 and 3 above, there is no dissemination of materials to any third party.</p>	Under current Michigan law, these actions to exploit a Vulnerable Adult may be deemed legal. <b>Though mutual consent is not present in Scenario 4, current laws do not hold Adult 1 legally accountable.</b>

**Table 2. "Vulnerable Adult" Definition under Michigan Law: Three Categories**

Element Details	Michigan Compiled Law (MCL) Sections
<p>1. An individual age 18 or over; <i>and</i>                      2(a). Who requires supervision because of age, developmental disability, mental illness, or physical disability; <i>or</i>                      2(b). Who requires personal care because of age, developmental disability, mental illness, or physical disability; <i>or</i>                      2(c). Who lacks the personal and social skills required to live independently because of age, developmental disability, mental illness, or physical disability.</p>	MCL 750.145m(u)(i) (1994)
<p>1. An individual age 18 or over; <i>and</i>                      2. Who is placed in an adult foster care family home or an adult foster care small group home.</p>	MCL 750.145m(u)(ii) (1994) citing MCL 400.703(3)(1)(b) of the Adult Foster Care Facility Licensing Act, MCL 722.115(5)(6), and MCL 722.115(5)(8)
<p>1. An individual age 18 or over; <i>and</i></p>	MCL 750.145m(u)(iii)

<p>2. Who is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or advanced age; <i>and</i></p> <p>3. Who is and who is suspected of being—or believed to be—abused, neglected, or exploited.</p>	<p>(1994) citing Michigan Compiled Law 400.11(b) of the Social Welfare Act</p>
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**Table 3. Vulnerable Adults and the Three Risks of Internet Abuse**

Risk Details
<p>Vulnerable Adults have <i>the</i> highest risk of being <b>targeted</b> for online predation (in comparison to adults in the general population).</p>
<p>Vulnerable Adults have <i>the</i> highest risk of being <b>abused</b> by online predators (in comparison to adults in the general population).</p>
<p>Vulnerable adults require extensive protections against online abuse to avoid negative health and wellness outcomes. Vulnerable adults have an increased risk (in comparison to adults in the general population) of having <b>extensive or permanent emotional damage</b> as a result of online abuse.</p>

**Table 4. Comparing Michigan “Nonconsensual Pornography” Law and Proposed Legislation to Guard Vulnerable Adults Against Online Predation**

Michigan’s “Nonconsensual Pornography” law, MCL 750.145(e) (2016)	
<p><b>Focus</b></p>	<p>An offender’s actions to <i>disseminate</i> sexually explicit visual material of an adult without the adult’s consent.</p>
<p><b>Elements</b></p>	<ol style="list-style-type: none"> <li>1. A person shall not intentionally and with the intent to threaten, coerce, or intimidate...</li> <li>2. Disseminate any sexually explicit visual material of another [adult] person if all of the following [four] conditions apply:</li> <li>3. The other person is not less than 18 years of age [age 18 or older].</li> <li>4. The other person is identifiable from the sexually explicit visual material itself or information displayed in connection with the sexually explicit visual material. This subdivision does not apply if the identifying information is supplied by a person other than the disseminator.</li> <li>5. The [offender]... obtains the sexually explicit visual material of the other person under circumstances in which a reasonable person would know or understand that the sexually explicit visual material was to remain private [and]</li> <li>6. The [offender]... knows or reasonably should know that the other person did not consent to the dissemination of the sexually explicit visual material.</li> </ol>

Michigan House Bill 4159 (2021), proposing an amendment to the State Penal Code	
<p><b>Focus</b></p>	<p>An offender’s actions to <i>exploit</i> (request, persuade, convince, threaten, command, force, or coerce) a Vulnerable Adult into sharing sexually explicit visual material of the Vulnerable Adult.</p>

<b>Elements</b>	<ol style="list-style-type: none"><li>1. A person shall not request, persuade, convince, threaten, command, force, or coerce...</li><li>2. A Vulnerable Adult [as defined by House Bill 4160 (2021)]...</li><li>3. Into providing that person, or any other person, sexually explicit visual material of the Vulnerable Adult.</li></ol>
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### **V. Expert Qualifications**

The undersigned are experts in the fields of aging and disability and are uniquely qualified to understand the needs of vulnerable adults with disabilities. Both individuals are active speakers at the state, national, and international levels regarding disability and special needs issues for vulnerable adults and authors of numerous peer-reviewed journal articles in the field. The information stated herein is based on our knowledge, training, and experience within our respective fields. The following is a brief bio for each of the signees.

**Annemarie Kelly, JD, LLM** is an attorney and Assistant Professor in the Department of Health Administration for the College of Health and Human Services at Eastern Michigan University in Ypsilanti, Michigan. Annemarie has served as counsel for businesses and individuals across the country in healthcare regulatory compliance and health policy matters. She formerly worked as a Compliance Officer and State Administrative Manager for the Michigan Department of Health and Human Services in Lansing, Michigan. In 2020, Annemarie received the Crain’s Detroit Business “Notable Women in Health Care Award.” The list celebrates female leaders throughout the health care sector for excellence in health care research, mentoring, teaching, and service work. She can be reached at [akelly30@emich.edu](mailto:akelly30@emich.edu)

**Christina Marsack-Topolewski, PhD, LMSW** is an Associate Professor in the School of Social Work for the College of Health and Human Services at Eastern Michigan University in Ypsilanti, Michigan. Formerly a special education teacher in public school systems, she still serves as a teacher consultant to help support students with special needs and their families. Christina is a co-investigator on the Michigan Older Caregivers of Emerging Adults with Autism and other Neurodevelopmental Disabilities (MI-OCEAN) Family Support Project. As an appointee to the National Task Group (NTG) for Intellectual Disabilities and Dementia Care Practices, she currently serves on the NTG Steering Committee. She can be reached at [ccmarsack@emich.edu](mailto:ccmarsack@emich.edu)

If you have any questions or concerns regarding this Letter of Support, please do not hesitate to reach out to us at [akelly30@emich.edu](mailto:akelly30@emich.edu) and [ccmarsack@emich.edu](mailto:ccmarsack@emich.edu).

Sincerely,



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**cc:**

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# Vulnerable Adults Need Protection Against Online Exploitation and Abuse

Christina Marsack-Topolewski, PhD, LMSW  
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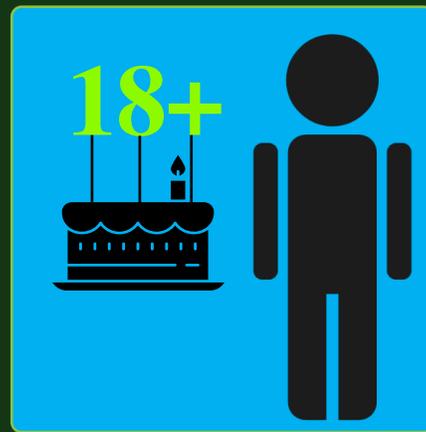
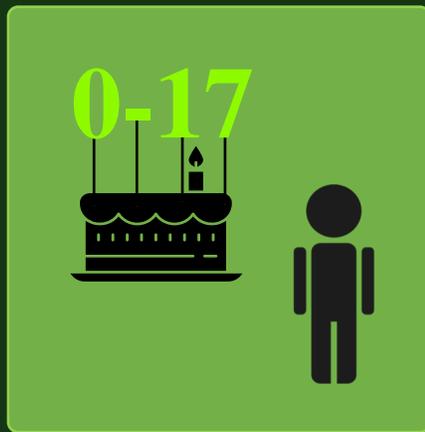
**E**

## Greatest vulnerability for:

1. Being targeted.
2. Online exploitation & abuse.
3. Long lasting or permanent emotional damage.

**E**

# Close the Gap in Our Internet Predation Laws



E

Intellectual and  
developmental  
disabilities (IDD)

&

Cognitive  
impairments  
(developed later in life)

E

Intellectual function deficits

&

Cognitive impairments

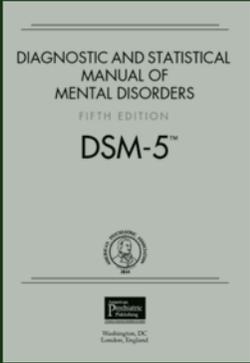
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**Challenges with:**

- Reasoning
- Problem solving
- Judgment

**E**

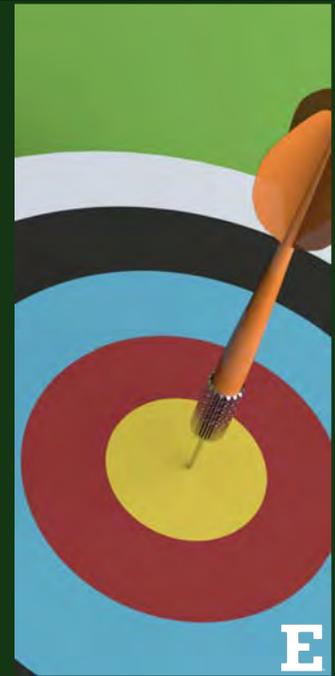
**Chronological age  $\neq$  cognitive / mental age**



**E**

## Increased risk of:

- Difficulty saying “no”
- Manipulation
- Inability to recognize a dangerous situation



**Vulnerable Adults with disabilities** = *The highest risk for experiencing violence*

- ✓ **World Health Organization**
- ✓ **United Nations**
- ✓ **US Dept. of Health and Human Services**

**E**

**Online exploitation with sexually explicit visual material** = **Abuse**  
**✓ Predation**  
**✓ Aggression**  
**✓ Bullying**

**E**

**Connect the Dots**

- ✓ Predation ..... **Internet**
- ✓ Abuse
- ✓ Bullying ..... **Internet-based**
- ✓ Exploitation
- ✓ Aggression ..... **Online/Virtual**
- ✓ Breach of consent

**E**



# HB 4159



**1**

Protects sexual expression rights for Vulnerable Adults and the general population.

**2**

Holds legally accountable those who sexually abuse, harass, or bully Vulnerable Adults online.

**3**

Deters would-be predators.



## Conceptual



## Social



## Practical

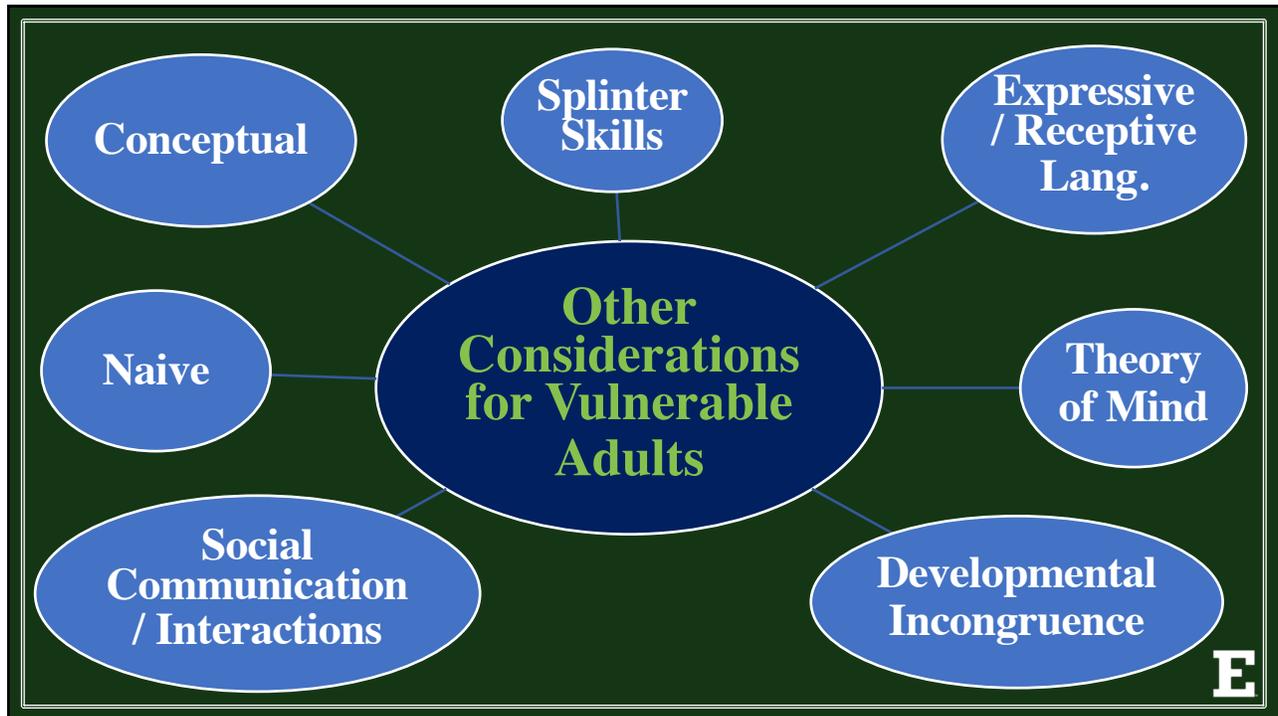
- Reasoning/problem solving
- Processing speed
- Working memory
- Language (expressive & receptive)
- Literacy
- Generalizing
- Overall knowledge
- Learning

- Communication skills
- Social judgment
- Queues and nuances
- Following rules
- Making/keeping friendships

- Personal care (ADL / IADL)
- Responsibilities
- Organizing tasks
- Rely on others

American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. American Psychiatric Publishing, 33-34 (2013).





## **HB 4159: A person shall not**

- request
- persuade
- convince
- threaten
- command
- force
- coerce

**E**

# Vulnerable Adults Need Protections Against Online Exploitation, Abuse, and Aggression

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